

CHAPTER 20
PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES

[Prior to 6/3/87, Transportation Department[820]—(01.B)Ch2]

761—20.1(307) Scope of chapter. Unless otherwise provided herein, this chapter of rules pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating budget or from the materials and equipment revolving fund established in Iowa Code section 307.47. Also, this chapter applies only to procurement from firms, as defined in subrule 20.2(2) herein.

761—20.2(307) Definitions. As used in this chapter, unless the context otherwise requires:

20.2(1) *“Department”* means the Iowa department of transportation.

20.2(2) *“Firm”* means any bona fide contracting entity including individuals and educational institutions. Except for educational institutions, the term shall not include governmental agencies or political subdivisions.

20.2(3) *“Competition”* means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms.

“Favorable terms” includes, but is not limited to: Price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

20.2(4) *Methods of procurement.*

a. “Formal advertising” means procurement by competitive bids and awards involving the following basic steps:

(1) Preparing a request for proposals, describing the requirements of the department clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term “request for proposals” means the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

(2) Publicizing the request for proposals by distributing it to prospective bidders, advertising in appropriate publications, and by other appropriate means, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(3) Receiving bids submitted by prospective contractors.

(4) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid conforms to the request for proposals and is the most advantageous to the department, price and other factors considered.

b. “Limited solicitation” means procurement by obtaining a sufficient number of quotations from qualified sources:

(1) As is deemed necessary to assure that the procurement is fair to the department, price and other factors considered, including the administrative costs of the procurement.

(2) As is consistent with the nature and requirements of the particular procurement.

c. “Negotiation” means any method of procurement other than formal advertising or limited solicitation.

761—20.3(307) Procurement policy. It is the policy of the department to procure equipment, materials, supplies and services in the most efficient and economical manner possible. It is also the policy of the department that procurement shall be competitive to the maximum practicable extent.

20.3(1) *Formal advertising.* The formal advertising method of procurement shall be used whenever this method is feasible and practicable under the existing conditions and circumstances. When

feasible and practicable, formal advertising shall be used for the procurement of equipment, materials or supplies if the aggregate amount of the purchase exceeds \$5,000.

20.3(2) Limited solicitation. The limited solicitation method of procurement may be used if formal advertising is not feasible or practicable, or for the procurement of equipment, materials or supplies if the aggregate amount of purchase is \$5,000 or less.

20.3(3) Negotiation. The negotiation method of procurement may be used if formal advertising or limited solicitation is not feasible or practicable, or in any of the following instances:

a. Procurement by negotiation is determined to be necessary and in the public interest during a period of manmade or natural disaster or emergency.

b. The aggregate amount of the purchase is less than \$500.

c. The procurement is for architectural, landscape architectural, engineering, or related professional or technical services.

d. The procurement is for other professional services.

e. The procurement is for services to be rendered by an educational institution.

f. It is impracticable to secure competition through formal advertising or limited solicitation, such as when:

(1) Equipment, materials, supplies or services can be obtained from only one source.

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances.

(3) Bids or quotations have been solicited, and no responsive bids or quotations have been received.

(4) Bids or quotations have been solicited, and the responsive bids or quotations do not cover the quantity requirements of the solicitation. In this case, negotiation is permitted for the remaining quantity requirements.

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for technical or professional services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to assure that the part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

g. The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

h. It is determined that the bids or quotations received are not reasonable or have not been independently arrived at.

i. Procurement by negotiation is otherwise authorized by law including, but not limited to, Iowa Code section 73.19.

20.3(4) *Targeted small business procurement.* Rescinded IAB 11/29/89, effective 1/3/90.

761—20.4(307) Formal advertising procedures and requirements.

20.4(1) *Bidders list.* The department's purchasing office shall maintain current bidders lists by commodity classification.

a. These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers, advertising literature, and targeted small businesses certified by the department of inspections and appeals.

b. Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by submitting a written request to: DOT Purchasing Manager, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. Subject to concurrence of legal counsel, a bidder's name may be removed from a bidders list or lists for any of the following reasons:

- (1) When the bidder has failed to respond to three consecutive requests for proposals.
- (2) When the bidder has failed to meet the performance requirements of a previous procurement.
- (3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.
- (4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.
- (5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

d. A bidder may appeal removal from a bidders list or lists by submitting the appeal in writing to the department at the address given in paragraph 20.4(1)"*b.*"

20.4(2) *Request for proposals and solicitation of bids.* The department shall prepare a request for proposals complete with bidding documents, specifications and instructions to bidders and send (or deliver) the request for proposals to prospective bidders for the purpose of bidding.

a. In special situations (e.g., the procurement of new model equipment), the request for proposals may be marked "preliminary" and sent to prospective bidders requesting their review of the proposal to determine their ability to bid, meeting the requirements of the procurement. The "preliminary" proposal process involves the following steps:

- (1) A vendor's conference may be held to discuss the "preliminary" proposal when the item in question is a new acquisition for the department.
- (2) Written requests for variations, deviations or approved equal substitutions to the proposal shall be accepted, evaluated and answered by the department.
- (3) The proposal may be amended by the department to incorporate approved changes.
- (4) A final request for proposals shall be sent to prospective bidders for the purpose of bidding.

b. The method to be used by the department in evaluating bids received shall be disclosed in the request for proposals.

c. The request for proposals shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement.

(1) Generally, the request for proposals shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) However, where the number of names on a bidders list is considered excessive in relation to a specific procurement, the list may be reduced for that procurement by any method consistent with paragraph 20.4(2)"*c.*"

(3) The fact that less than an entire bidders list is used shall not in itself preclude the furnishing of requests for proposals to others upon request, or the consideration of bids received from bidders who were not invited to bid.

d. The department shall publicize the procurement by advertising in appropriate publications, giving the date and time of bid opening, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the request for proposals.

e. Minority and small business enterprises shall be encouraged to participate in the bidding process.

20.4(3) Instructions to bidders. Each bidder shall prepare the bidding documents in the manner prescribed and furnish all information and samples requested in the request for proposals. The following shall be adhered to by all bidders when preparing and submitting bids:

a. *Bid preparation.* Bids shall be signed and prepared in ink or typewritten on the bidding documents provided. Telegraphic or telephonic bids shall not be considered.

b. *Information to be provided by bidder.* In the space provided, the bidder shall denote brand name, manufacturer's name, model number and any other required information to assist in identifying each item the bidder proposes to supply.

c. *New merchandise.* Unless otherwise specified, all items bid shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

d. *Bid price.* Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided on the bidding documents. Alternate prices may be submitted by attaching an addendum to the bidding documents. In case of error, the unit price shall prevail. If unit price is not requested on the bidding documents, the total price per item shall prevail.

e. *Discounts.* Bidders shall quote net discount price. No other discounts shall be considered in making the award.

f. *Time of acceptance.* The bidder shall hold the bid open for action by the department at least 30 days past the bid opening date.

g. *Escalator clauses.* Unless specifically provided for in the request for proposals, a bid containing an escalator clause shall not be considered.

h. *Federal and state taxes.* Except for specific items that will be noted in the request for proposals, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bid price. Exemption certificates shall be furnished to bidders upon request.

i. *Delivery dates.* In the space provided, the bidder shall show the earliest date on which delivery can be made. When the request for proposals shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

j. *Ties and reservations.* No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds for rejection of the bid.

k. *Changes and additions.* No changes in or additions to the request for proposals shall be permitted unless: A written request for a change or an addition is submitted to the department's purchasing office, and the change or addition is approved by the purchasing office at least five days prior to bid opening. The purchasing office shall notify all bidders of approved changes or additions.

Any unauthorized change in or addition to the request for proposals shall be sufficient grounds for rejection of the bid.

l. *Submission of bids.* All bids shall be submitted in sufficient time to reach the department's purchasing office prior to the time set for the opening of bids. Any bid received after the time set for bid opening shall be returned to the bidder unopened. Bids received shall be dated and time-stamped by the purchasing office showing the date and hour received. By submitting a bid, the bidder:

(1) Agrees that the contents of the bid will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the request for proposals.

m. *Proposal guaranty.* A proposal guaranty may be required as security that the bidder will execute the contract if awarded to the bidder. If required, each bid shall be supported by a proposal guaranty.

ty in the form and amount prescribed in the request for proposals. Bids not so supported shall not be read.

n. Withdrawal of bids prior to opening. Bids may be withdrawn prior to the time set for the opening of bids. Prior to opening, a bidder who withdraws a bid may submit a new bid.

o. Modification or withdrawal of bids after opening. After opening, no bid may be modified. A bid may be withdrawn after opening only if:

(1) The bidder submits, at least three days prior to contract award, a sworn statement asserting that the bid contains a substantial inadvertent error and that the bidder would suffer a serious financial loss if required to perform under the bid, and

(2) The purchasing director approves the withdrawal. The purchasing director may base the decision to approve or deny the withdrawal on any factors the purchasing director deems relevant, including but not limited to the best interests of the agency, possible prejudice to other bidders or the bidding process, and the extent of financial hardship on the bidder if withdrawal is not allowed.

20.4(4) Public opening of bids. Bids shall be opened publicly and read aloud at the time stipulated in the request for proposals.

20.4(5) Consideration of bids. The department reserves the right to accept or reject any or all bids. Individual bids may be rejected for any of the following reasons:

- a.* Noncompliance with the requirements of this rule or of the request for proposals.
- b.* Financial insolvency of the bidder.
- c.* Evidence of unfair bidding practices.
- d.* For any other reason stated in this rule.

20.4(6) Contract award.

a. Time frame. Unless otherwise specified by the department in the request for proposals, an award shall be made within 30 days after bid opening if it is in the best interests of the state. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

b. Tied bids. Bids which are equal in all respects and are tied in price shall be resolved among the tied bidders by giving first preference to an Iowa bidder and second preference to the bidder who satisfactorily performed a contract the previous year for the same item at the same location. If the tie involves bidders with equal standing, the award shall be determined by lot among these bidders. A tied bidder or the bidder's representative may witness the determination by lot.

c. Small business. Rescinded IAB 11/29/89, effective 1/3/90.

d. Tabulation of bids. A tabulation of bids with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to contract award.

e. Protests. Any protest of the recommended contract award shall be submitted in writing to: Director of Purchasing, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing at least three days prior to contract award. The protest shall be considered by the authority making the contract award. This is not a contested case.

f. Return of proposal guaranty. Unsuccessful bidders' proposal guaranties shall be promptly returned by the department after award is made. The proposed guaranty of the successful bidder shall be returned in accordance with subrule 20.4(7).

20.4(7) Contract execution and performance.

a. Execution. The successful bidder shall enter into (execute) a formal contract with the department within 15 days after award.

b. Performance bond and certificate of insurance. A performance bond or certificate of liability and property damage insurance, or both, may be required for those contracts involving services or specially constructed equipment. If required, the performance bond and certificate of insurance shall be filed with the department within 15 days after award.

c. *Return of proposal guaranty.* The proposal guaranty of the successful bidder shall be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if they are required) within 15 days after award, or fails to comply with Iowa Code chapter 494 or 496A, the award may be annulled and the proposal guaranty forfeited.

d. *Assignment of contract.* The contractor may not assign the contract to another party without written authorization from the department's purchasing office.

e. *Strikes, lockouts or acts of God.* If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor shall promptly advise the department's purchasing office. The department may elect to cancel the contract without penalty to either the contractor or to the department.

f. *Removal of trade-ins.* If the procurement involves old equipment to be traded in for new equipment, the contractor shall be responsible for removing the old equipment from departmental storage facilities within 30 days after the department's acceptance of the new equipment. The department shall bill the contractor for all costs associated with the return of the trade-in equipment after the 30-day grace period.

g. *Payment.* Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice.

h. *Liquidated damages.* The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period.

20.4(8) Additional requirements.

a. The standard specifications as referenced and adopted in rule 761—125.1(307A), where applicable and not in conflict with this rule or with the requirements of a particular procurement, shall apply to formal advertising procurement activities.

b. If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

c. Procurement of motor vehicles shall include the calculation and reduction of life cycle costs as specified in Iowa Code section 18.3(1).

761—20.5 to 20.7 Reserved.

761—20.8(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services. This rule prescribes procedures for the procurement of architectural, landscape architectural, engineering and related professional and technical services by negotiation.

20.8(1) Prequalification. When procuring any of these services, the department shall consider for contract award only those firms who are prequalified with the department in the category of work to be contracted except when sole source or emergency selection and negotiation is approved.

Also, when another party (e.g., a political subdivision), under agreement with the department or as prescribed by law, must obtain the department's approval of a contract between the party and a firm for provision of any of these services, the firm to be awarded the contract must be prequalified with the department in the category of work to be contracted.

a. *Application forms.* A firm wishing to prequalify with the department in one or more categories of work shall complete and submit Forms 102111 and 102113. Blank forms may be obtained from and completed forms shall be returned to: Office of Purchasing, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. *Work categories and minimum qualification standards.* Descriptions of the categories of work for which firms may be designated as prequalified and the minimum qualification standards for each category shall be sent to the applicant firm when the firm requests blank application forms from the

purchasing office. The minimum qualification standards used for prequalification are also set forth in the appendix to this rule.

c. Preparation of application forms.

(1) On Form 102111, the applicant firm shall provide general information regarding the firm.

(2) On Form 102113, the applicant firm shall provide detailed information regarding the firm's qualifications to perform a specific category of work. A separate Form 102113 must be completed and submitted for each category.

(3) The firm shall support its application for prequalification for a particular category of work on the basis of adequacy and expertise of personnel, specialized experience in the field or fields required, performance records and the minimum qualification standards set forth for the category.

(4) The department shall not recognize joint ventures for the purpose of prequalification. Each firm shall be prequalified in terms of its own capabilities. A firm may consider itself qualified in a particular work category when the major, significant aspects of the work can be accomplished using the firm's own personnel and equipment.

This shall not preclude consideration during the department's selection process of joint ventures or firms in the practice of contracting for specialized services required for the accomplishment of work in a particular category. Therefore, the applicant firm shall indicate on Form 102113 those aspects of the work category for which the firm is not itself equipped to perform. The means by which the firm proposes to accomplish those aspects and the anticipated sources of additional expertise, specialists or equipment required for accomplishment shall also be indicated by reference to the other firms with which the applicant firm associates through joint ventures or other forms of agreement.

d. Initial prequalification.

(1) The department shall evaluate the application forms submitted by a firm in terms of the minimum qualification standards for the work categories applied for and, if applicable, the past performance of the firm on contracts with the department for work falling within the particular categories.

(2) If, for a particular category of work, the firm meets the minimum qualification standards and past performance was acceptable, the department shall issue a written statement of acceptability to the firm indicating that the firm is prequalified in this category. If several statements of acceptability are to be issued to a firm at the same time, the department may combine them into one document for the purpose of issuance.

(3) Statements of acceptability shall be effective during the calendar year of issuance and for one year thereafter, to expire on December 31.

e. Reapplication and renewal.

(1) At least three months prior to the expiration date, the department shall send Forms 102111 and 102113 to each prequalified firm. To reapply, a firm shall complete the forms and submit them to the purchasing office by October 31.

(2) The department shall process the reapplication and issue a statement of acceptability in the same manner as initial prequalification.

f. Amendment or expansion of prequalification.

(1) A prequalified firm may submit amended or new prequalification forms at any time, accompanied by a separate statement explaining the submission.

(2) If the submission affects the minimum qualification standards or if it is an application for prequalification for an additional category of work, the department shall process the submission in the same manner as initial prequalification. However, the prequalification expiration date assigned to the firm will remain the same.

g. Denial or cancellation of prequalification.

(1) Prequalification in a particular category of work may be denied or canceled if the firm fails to meet the minimum qualification standards for the category, or if the firm's performance on a contract with the department for work falling within the category was unacceptable.

(2) Prequalification may also be denied or canceled for good cause including, but not limited to, omissions or misstatements of material fact on the application forms which could affect the prequalification status of the firm.

(3) The department shall notify the firm in writing of denial or cancellation, the reason(s) therefor, and the person to contact in writing to protest the department's action.

h. Encouragement of firms to prequalify.

(1) It is the policy of the department to encourage firms which have not previously provided services to the department to prequalify.

(2) It is also the policy of the department to encourage minority business enterprises and firms with approved affirmative action programs to prequalify.

20.8(2) Reserved.

20.8(3) Reserved.

20.8(4) *Determination of necessity and preselection operations.*

a. When the use of outside services as described in this rule is considered necessary, the office to be responsible for administration of the contract (administering office) shall prepare and submit the following to the responsible division director for approval to initiate selection:

(1) A statement of necessity supporting the determination to utilize outside services.

(2) A description of the project, problem to be solved, services required or proposed work including its purpose and objectives.

(3) The time frame within which the contracted services must be performed.

(4) An estimate of the total contract amount.

b. Prior to initiating selection, the administering office shall develop an independent estimate of the cost of the required work or services based on a detailed analysis of the costs expected to be generated. Consideration shall be given to the estimated value of the services to be rendered, and to the scope, complexity and the nature of the project. The estimate shall be revised as required during negotiations to reflect changes in or clarification of the scope of the work to be performed.

(1) When design or construction inspection is involved, a fee estimate based on the application of percentage factors to project cost estimates of the various segments of the work involved may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent estimate.

(2) If the nature, complexity or other factors inherent in the work make it impossible to develop an accurate independent estimate, the development may be waived on approval of the division director.

c. Rescinded, effective 9/21/83.

20.8(5) *Selection.* A firm with which to initiate negotiations shall be selected according to the following provisions:

a. Preliminary selection. The administering office shall review the qualification data of the firms prequalified in the category or categories of work required and identify those firms considered to be well qualified to provide the desired services. Factors to be considered in this process are as follows:

(1) The number and qualifications of professional and technical staff;

(2) Performance records for timeliness, quality of work and project management;

(3) Proximity or accessibility to the work location where appropriate; and

(4) Specialized experience or expertise which would enhance the ability to perform the services or work required.

b. Prenegotiation discussions. The administering office may hold discussions with prequalified firms as necessary to evaluate recent changes in qualifications and performance, current and projected workload, willingness to meet time requirements and approach to the project.

c. Final selection. The administering office shall make a final selection of three well-qualified firms and arrange these in order of preference. The factors which are the primary bases for final selection shall be documented in the project file. Upon approval of the division director, the administering office shall proceed to negotiate with the firm in first order of preference.

d. Selection committee—highway division. The department's highway division selection procedures shall conform to the previous paragraphs of this subrule, except that the functions identified in these paragraphs as being performed by the administering office shall be performed for the highway division by a selection committee appointed for the particular selection process. The director of the highway division shall appoint the selection committee, which shall be composed of three to five members. The committee shall consist of:

- (1) An engineer from the administering office who will not be directly involved with the contract. If more than one office will be using the contracted services, each shall be represented.
- (2) A person from one of the financial offices of the department's administration division.
- (3) The highway division's consultant contract coordinator (nonvoting member).
- (4) One or more engineers from the highway division's operations bureau or district staff (optional).

e. Selection committee—other divisions. Other divisions of the department shall use a selection committee if the estimated cost of the contract is in excess of \$10,000. Two-thirds of the selection committee shall not be responsible for contract administration.

20.8(6) Negotiations. Negotiations shall lead to the development of a contract mutually satisfactory to the department and the selected firm. The administering office shall use the services of technical, legal, auditing, and other specialists in the department to the extent deemed appropriate.

a. Negotiations shall be directed toward:

- (1) Making certain that the firm has a clear understanding of the essential requirements;
- (2) Determining that the firm shall make available the necessary personnel and facilities to accomplish the work within the required time;
- (3) Determining, where applicable, whether the firm can provide a design that will permit construction of the facility at a construction cost not to exceed the limit established for the project; and
- (4) Reaching mutual agreement on the provisions of the contract, including a fair and reasonable price for the required work.

b. The administering office shall request the selected firm to submit its proposal. The request shall provide all information necessary to enable the firm to prepare a proposal with supporting cost or pricing data.

c. Negotiations shall be conducted initially with the firm given first preference. If a mutually satisfactory contract cannot be negotiated, upon receiving a best and final offer in writing, the administering office shall formally terminate the negotiation and notify the firm. Termination of negotiations shall be made without prejudice and the proceedings and substance of terminated negotiations shall not be revealed by the administering or other offices of the department except as required by law.

Negotiations then shall be initiated with the next listed firm in the order of preference and this procedure shall be continued until a mutually satisfactory contract has been negotiated.

If a mutually satisfactory contract cannot be negotiated with any of the three preferred firms, the administering office, upon approval of the responsible division director, shall either:

- (1) Select one or more additional prequalified firms with which to negotiate; or
- (2) Redefine the scope of the project or work and select firms with which to negotiate in accordance with the procedures of subrule 20.8(5). All firms (including those with which negotiations were previously conducted) which are prequalified shall be considered for selection.

d. The administering office shall negotiate a price considered fair and reasonable based on a comparative study of the independent estimate developed by the administering office and the proposal of the firm. Significant difference between elements of the two figures and between the overall figures shall be discussed and the administering office shall ascertain the reasons therefor. If the requirement for an independent estimate is waived, the administering office shall evaluate the acceptability of the firm's proposal on the basis of reasonableness of the individual elements of price proposed.

e. Where considered advisable by the department or required by federal regulations, a preaudit evaluation of the firm's proposal shall be performed by the department. The preaudit evaluation may

include: An examination of the firm's accounting methods and procedures to determine the firm's ability to segregate and gather costs to be charged against the project; an examination of the company's cost factors to assure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the company's auditability. A "Preaudit Report of Evaluation and Assurance" shall be prepared and referred to the administering office.

f. Promptly at the conclusion of each negotiation a memorandum setting forth the principal elements of the negotiations shall be prepared for use by reviewing authorities and for inclusion in the contract file. The memorandum shall include:

- (1) A listing of the personnel representing the department and the firm in the negotiations;
- (2) A statement of the purpose of the negotiations;
- (3) A summary of the administering office's and the firm's initial price estimates;
- (4) When required to be performed, a statement that the preaudit evaluation of the firm's proposal was reviewed and considered during the negotiations and a statement of the evaluation's effect on the final price, if any;
- (5) The most significant facts or considerations influencing the establishment of the final price; and
- (6) An appropriate explanation (in fixed price type contracts) where the total price negotiated differs significantly from the total price objective.

20.8(7) Contract. Following successful negotiations, a formal contract shall be executed. The contract shall clearly define the work or design required, services to be performed, method, time and amount of payment, completion schedules, and other requirements and conditions unique to the particular project.

a. The contract, where appropriate, shall specify the process by which extra work orders or supplemental agreements are negotiated. The contract shall include a provision that the contractor agrees that additional work not clearly required by the contract shall not be undertaken without the prior approval of the department.

b. The contract shall provide for periodic reports indicating the total estimated work accomplished by the contractor during the reporting period. Progress reports shall correspond to the progress as indicated by the contractor's billing to the department for that period.

20.8(8) Sole source and emergency selection and negotiation. An administering office may select a single specified firm with which to negotiate immediately upon approval to do so from the responsible division director. The selected firm need not be prequalified. The justification for use of sole source or emergency selection and negotiation and the basis on which a particular firm is selected shall be fully documented and made a part of the contract file.

a. Sole source selection and negotiation may be justified when one of the following conditions exists:

- (1) Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more qualified than other firms.
- (2) The work is of a specialized character or related to a specific geographical location so that a single firm by virtue of specialized experience and expertise or familiarity with the location could most satisfactorily complete the work.
- (3) The product of the work to be accomplished shall ultimately be maintained by the firm.

b. Emergency selection and negotiation may be justified when it is determined that normal selection and negotiation procedures would unduly delay the initiation of critically needed work.

20.8(9) Conflicts with federal requirements. If any provision of this rule would cause denial of funds or services from the United States government or would otherwise be inconsistent with requirements of federal law or regulations, the federal requirements shall be adhered to, but only to the extent necessary to prevent denial of the funds or services or to eliminate the inconsistency with federal requirements.

These rules are intended to implement Iowa Code sections 18.3(1), 18.6(10), 73.15 to 73.21, 307.10, 307.12 and 307.21.

[Filed 7/1/75]

[Filed 4/30/76, Notice 1/12/76—published 5/17/76, effective 6/21/76]

[Filed Emergency 7/19/76—published 8/9/76, effective 7/19/76]

[Filed 7/28/83, Notice 6/8/83—published 8/17/83, effective 9/21/83]

[Filed 2/6/87, Notice 12/17/86—published 2/25/87, effective 4/1/87]

[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]

[Filed 11/1/89, Notice 9/20/89—published 11/29/89, effective 1/3/90]

APPENDIX TO RULE 761—20.8(307)
MINIMUM QUALIFICATION STANDARDS
FOR
ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING
AND RELATED PROFESSIONAL AND TECHNICAL SERVICES

Each category of work for which firms may be designated as prequalified references one of the statements shown below.

Statement A. Professional status in the category of work shall be demonstrated on Form 102113 by reference to resumes and personal experience histories of the firm's principals or key personnel. Other professional and technical personnel supporting prequalification in the category shall also be referenced on Form 102113. Satisfactory experience in the category shall be demonstrated on Form 102113 by reference to completed projects. When specialized equipment is necessary for satisfactory performance of the work, firms shall list on Form 102113 the type, make and model of subject equipment owned by the firm.

Statement B. Professional status in the category of work shall be demonstrated on Form 102113 by reference to at least one person registered by the Iowa engineering and land surveying examining board as a professional engineer. Resumes of personnel so referenced shall indicate the extent and nature of experience in the category of work. Other personnel supporting prequalification in the category shall be referenced on Form 102113. Satisfactory experience in the category shall be demonstrated on Form 102113 by reference to completed projects.

Firms may designate one or more individuals, holding a certificate of registration granted by the Iowa engineering and land surveying examining board as a professional engineer, as responsible for the practice of engineering in Iowa by the firm. The designated individual or individuals shall have full authority to make all final engineering decisions on behalf of the firm with respect to the work performed by the firm. This designation shall not relieve the firm of any responsibility or liability imposed upon it by law or by contract.

Statement C. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, registration as a land surveyor is required.

Statement D. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, the applicant may be registered as an architect with the Iowa architectural examining board.

Statement E. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, registration as a landscape architect by the Iowa landscape architectural examining board is required.